

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

infoUSA Inc.

Plaintiff,

v.

0-0 DataNetwork, Corp.,

Defendant.

No. \_\_\_\_\_

**COMPLAINT**

**(Demand for Jury Trial)**

Plaintiff alleges:

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff infoUSA Inc. (“infoUSA”) (formerly known as American Business Information, Inc.) is a Delaware corporation with its principal place of business in the State of Nebraska.

2. Defendant 0-0 DataNetwork Corp. (“0-0 DataNetwork”) is a Florida corporation with its principal place of business in the State of Florida.

3. This action is brought under the federal Copyright Act of 1976, as amended, 17 U.S.C. §§ 101 et seq (the “Act”). The Court has jurisdiction of the subject matter of this action pursuant to 28 U.S.C. § 1338(a), in that, this is a civil action arising under an Act of Congress relating to copyrights. Venue is proper in this district pursuant to 28 U.S.C. § 1400 in that, this is a civil action arising under an Act of Congress relating to copyrights and because this is a

judicial district in which 0-0 DataNetworks was subject to personal jurisdiction at the time this action was commenced.

#### **STATEMENT OF FACTS**

4. infoUSA produces database compilations of business and consumer information and sells or licenses such business and consumer database compilations to third parties. Among the database compilations sold by infoUSA is the infoUSA Database, a database of information on business in the United States.

5. The infoUSA Database is meticulously compiled by infoUSA's staff and contains a substantial amount of material created by infoUSA's own skill, labor and judgment. The infoUSA Database is an original work of expression that is copyrightable subject matter under the laws of the United States.

6. infoUSA has complied in all respects with the Act and all other laws governing copyright, by applying for copyright registration of the infoUSA Database on March 31, 2000, making the required deposit, and receiving from the Register of Copyrights a Certificate of Registration, No. TX 5-195-031, dated April 4, 2000, a copy of which is attached to this Complaint as Exhibit A and incorporated herein by this reference.

7. The infoUSA Database has been published by infoUSA, and all copies of it made by infoUSA under its authority or license have been published in strict conformity with the provisions of the Act and all other laws governing copyright.

8. infoUSA remains the sole owner of all right, title and interest in and to the infoUSA Database.

9. infoUSA distributes the infoUSA Database on CD-Rom. Each user of the infoUSA Database, upon installing the infoUSA Database onto a computer, consents to the terms

01-457757.02

of a license agreement (“License Agreement”) contained on the infoUSA Database CD-Rom. The infoUSA Database can only be legitimately be accessed from a CD-Rom by consenting to the License Agreement. A copy of the License Agreement is attached as Exhibit B.

10. The License Agreement provides that a purchaser of the infoUSA Database “shall use [the database] solely for [its] own internal data processing purposes” and that the purchaser “do[es] not have the right to sublicense, resell, relicense or otherwise deliver [the database] or any part thereof to any third party or use the [database] for the benefit of a third-party.” *See* License Agreement ¶ 1.1.

11. The License Agreement also provides that “[e]ach party irrevocably subjects itself to the exclusive jurisdiction of the courts of Nebraska with respect to any disputes arising hereunder.” *See* License Agreement ¶ 7.1.

12. Upon information and belief, 0-0 DataNetwork has willfully infringed on infoUSA’s copyright of the infoUSA Database or, alternatively, has breached the License Agreement by publishing and placing on the market a database compilation of business information (“USA Business Database”) copied from the infoUSA Database.

13. infoUSA has delivered a letter to 0-0 DataNetworks demanding it cease and desist infringing infoUSA’s copyright, but, upon information and belief, 0-0 DataNetwork has failed to respond to infoUSA and had continued to infringe the copyright.

### **FIRST CLAIM FOR RELIEF**

#### **(Copyright Infringement)**

14. infoUSA incorporates the allegations of Paragraphs 1 to 13 above as though fully stated herein.

15. The infoUSA Database is the subject of a copyright owned by infoUSA.

16. 0-0 DataNetworks has willfully infringed on infoUSA's exclusive rights guaranteed under Title 17, United States Code by reproducing, duplicating and using the infoUSA Database.

17. As a result of infringement by 0-0 DataNetworks, infoUSA has been and will be damaged in an amount to be proven at trial.

**SECOND CLAIM FOR RELIEF (ALTERNATIVE)  
(Breach of Contract)**

18. infoUSA incorporates the allegations of Paragraphs 1 to 17 above as though fully stated herein.

19. 0-0 DataNetworks entered into the License Agreement with infoUSA when 0-0 DataNetworks accessed the infoUSA Database on CD-Rom.

20. DataNetworks breached the License Agreement by publishing and placing on the market the USA Business Database, copied from the infoUSA Database without infoUSA's permission and in violation of the terms of the License Agreement.

21. infoUSA has suffered damage as a direct and proximate result of said breach of the License Agreement.

**RELIEF REQUESTED**

infoUSA requests:

A. All remedies available under the Copyright Act, including but not limited to:

1. A preliminary and permanent injunction enjoining 0-0 DataNetwork from infringing the above-mentioned copyright of the infoUSA Database in any manner and from reproducing, duplicating or using any software or information derived from the infoUSA Database as well as requiring 0-0 DataNetwork to disclose all third parties to whom it has transmitted the infoUSA Database, whether in whole or in part;

2. An order of impoundment requiring 0-0 DataNetwork to immediately deliver all copies of the infoUSA Database in its possession or under its control, including any and all electronic copies in its possession or control and including any works that utilize or include data from the infoUSA Database in its possession or control; and
  3. Such damages as are available by law, including profits of 0-0 DataNetwork, infoUSA's actual damages, statutory damages and exemplary damages plus attorneys' fees incurred in this suit and in the investigation preceding it.
- B. Damages and other relief for 0-0 DataNetworks' breach of contract; and
- C. Such interest, attorneys' fees, and other relief as are permitted by the law or allowed by the facts.

#### **REQUEST FOR PLACE OF TRIAL**

infoUSA requests that trial of this case be had at Omaha.

Respectfully submitted this 6th day of March, 2003.

INFOUSA INC., Plaintiff

By s/ Jeremy Fitzpatrick  
Bartholomew L. McLeay #17746  
Jeremy Fitzpatrick #21943  
Kutak Rock LLP  
The Omaha Building  
1650 Farnam Street  
Omaha, NE 68102-2186  
(402) 346-6000

Ad FEB. 19. 2003 2:45PM C. / INFOUSA LEGAL

NO. 843 P. 2/5

## CERTIFICATE OF REGISTRATION



OFFICIAL SEAL

This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Marybeth Peters*  
 REGISTER OF COPYRIGHTS  
 United States of America

FORM TX

For a Nondramatic Literary Work  
UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER

TX 5-195-031



DATE OF REGISTRATION

Month 4 Day 12 Year 00

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1

## TITLE OF THIS WORK

GROUP REGISTRATION FOR AUTOMATED DATABASE TITLED AMERICAN BUSINESS INFORMATION, INC enhanced database (PUBLISHED UPDATES FROM Jan. 1, 2000 THROUGH Mar. 31, 2000)

## PREVIOUS OR ALTERNATIVE TITLES

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work

REPRESENTATIVE PUBLICATION DATE: Mar. 22, 2000 - UPDATED MONTHLY

If published in a periodical or serial give: Volume Number Issue Date On Pages

2

## NAME OF AUTHOR

a infoUSA Inc.

## DATES OF BIRTH AND DEATH

Year Born Year Died

Was this contribution to the work a

"work made for hire?"

☒ Yes☐ No

## AUTHOR'S NATIONALITY OR DOMICILE

Name of Country

OR Citizen of

Domiciled in: U.S.A.

## WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous?

☐ Yes ☒ No

Pseudonymous?

☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions.

## NOTE

Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed.

## UPDATED AND REVISED COMPILATION OF DATABASE INFORMATION

## NAME OF AUTHOR

b

## DATES OF BIRTH AND DEATH

Year Born Year Died

Was this contribution to the work a

"work made for hire?"

☐ Yes☐ No

## AUTHOR'S NATIONALITY OR DOMICILE

Name of Country

OR Citizen of

Domiciled in:

## WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous?

☐ Yes ☐ No

Pseudonymous?

☐ Yes ☐ No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed.

## NAME OF AUTHOR

c

## DATES OF BIRTH AND DEATH

Year Born Year Died

Was this contribution to the work a

"work made for hire?"

☐ Yes☐ No

## AUTHOR'S NATIONALITY OR DOMICILE

Name of Country

OR Citizen of

Domiciled in:

## WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous?

☐ Yes ☐ No

Pseudonymous?

☐ Yes ☐ No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed.

3

## YEAR IN WHICH CREATION OF THIS

WORK WAS COMPLETED

2000

This information must be given in all cases.

## DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK

Complete this information ONLY if this work has been published.

Month: March Day: 31 Year: 2000

4

See instructions before completing this space.

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2.

infoUSA Inc.  
 5711 S. 86TH CIRCLE, OMAHA, NE 68127

TRANSFER If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright.

APPLICATION RECEIVED

APR 12, 2000

ONE DEPOSIT RECEIVED

APR 12, 2000

TWO DEPOSITS RECEIVED

FUNDS RECEIVED

DO NOT WRITE HERE OFFICE USE ONLY

MORE ON BACK ▶ Complete all applicable spaces (numbers 5-8) on the reverse side of this page.

DO NOT WRITE HERE

EXHIBIT

tabbles

A

FEB.19.2003 2:45PM INFOUSA LEGAL

NO.843 P.3/5

EXAMINED BY <i>De</i>	FORM TX
CHECKED BY	
<input type="checkbox"/> CORRESPONDENCE	FOR
<input type="checkbox"/> Yes	COPYRIGHT
	OFFICE
	USE
	ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

☒ Yes ☐ No If your answer is "Yes," why is another registration being sought? (Check appropriate box.)a. ☐ This is the first published edition of a work previously registered in unpublished form.b. ☐ This is the first application submitted by this author as copyright claimant.c. ☒ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▶

Year of Registration ▶

5

## DERIVATIVE WORK OR COMPILED

Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼

PREVIOUSLY REGISTERED DATABASE  
NOT YET RECEIVED

2000

a

6

See instructions  
before completing  
this space.

Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

UPDATED AND REVISED COMPILATION OF DATABASE INFORMATION, UPDATED MONTHLY

b

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.  
Name ▼ Account Number ▼

a

7

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt./City/State/ZIP ▼

Todd Frazier, Corporate Counsel  
InfoUSA Inc.  
5711 S. 86th CIRCLE, OMAHA, NE 68127

Area code and daytime telephone number ▶ 402-593-4500

Fax number ▶

Email ▶

b

CERTIFICATION I, the undersigned, hereby certify that I am the

Check only one ▶

- ☐ author  
☐ other copyright claimant  
☐ owner of exclusive right(s)  
☒ authorized agent of

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Todd Frazier

Date ▶ 3-31-2000

Handwritten signature (X) ▼

X

8

Certificate will be mailed in window envelope to this address:

Name ▼	Todd Frazier, Corporate Counsel
Number/Street/Apt. ▼	InfoUSA Inc. 5711 S. 86TH CIRCLE
City/State/ZIP ▼	OMAHA, NE 68127

## VARIATIONS

- Complete all necessary spaces
- Sign your Application in space 8

SEND ALL ITEMS DISC  
IN THE SAME PACKAGE

1. Application form
  2. Nonrefundable filing fee in check or money order as of July 1, 1989, the filing fee for Form TX is \$30.
  3. Deposit material
- MAILED  
Library of Congress  
Copyright Office  
101 Independence Avenue, S.E.  
Washington, D.C. 20558-6000

9

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Omaha, Nebraska 68127  
(402) 593-4565

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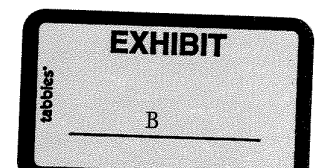
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title, and interest in and to the infoUSA Inc. Software, including associated intellectual property rights, are and shall remain with infoUSA Inc.

1.4 You agree not to cause or permit any of your employees, agents, or representatives to reverse engineer, decompile, disassemble, or otherwise translate the infoUSA® Database in whole or in part.

2. License Fees. The license fees paid by you are paid in consideration of the licenses granted under this Agreement.

3. Term. This Agreement shall begin upon your installation of the infoUSA® Database and shall continue until terminated. You may terminate this Agreement at any time upon written notice to infoUSA Inc. infoUSA Inc. may terminate this Agreement upon your breach of any term of this Agreement. Upon termination of this Agreement for any reason, you agree to (a) cease all use of the infoUSA® Database, (b) delete all copies of the infoUSA® Database or any part thereof from your computer, and (c) return to infoUSA Inc. any and all copies of the infoUSA® Database or any part thereof, whether in print, CD-ROM or some other media.

4. Limited Warranty. infoUSA Inc. warrants, for your benefit alone, for a period of 30 days from the date of purchase ("Warranty Period") that the infoUSA® Database shall perform to your satisfaction and that the CD-ROM disc(s) on which the infoUSA® Database is contained shall be free from defects in material and workmanship. If during the Warranty Period, you are not completely satisfied or a defect in the CD-ROM disc(s) appears, you may return the complete package for a replacement or refund. You agree that the foregoing constitutes your sole and exclusive remedy for breach by infoUSA Inc. of any warranties made under this Agreement. EXCEPT FOR THE WARRANTIES SET FORTH ABOVE, THE INFO USA® DATABASE IS LICENSED "AS IS", AND INFO USA INC. DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

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the possibility of any such loss or damage. Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.

6. Confidentiality. You agree to keep confidential the infoUSA® Database and all other information and technology transmitted or conveyed by infoUSA Inc. pursuant to this Agreement.

7. Governing Law.

7.1 Each party acknowledges and agrees that this Agreement is executed and delivered in the State of Nebraska as a result of your contacts with infoUSA Inc. in said state. Each party irrevocably subjects itself to the exclusive jurisdiction of the courts of Nebraska with respect to any disputes arising hereunder and agrees that the laws of Nebraska shall govern and control such dispute, without regard to its choice of law rules.

7.2 You agree to use the Product in accordance with local, state, and federal laws, and you acknowledge that compliance with such laws may limit your use of the Product for certain applications, including, but not limited to direct marketing and telemarketing applications.

FEDERAL AND STATE LAW MAY IMPOSE RESTRICTIONS ON THE ABILITY TO SOLICIT BY TELEPHONE OR FACSIMILE. LAWS VARY FROM JURISDICTION TO JURISDICTION. A VIOLATION OF SUCH LAWS MAY RESULT IN SIGNIFICANT PENALTIES AND OTHER SANCTIONS. ANY PERSON INTENDING TO USE INFOUSA INC. PRODUCTS FOR SOLICITATION PURPOSES SHOULD CONSULT WITH THEIR OWN COUNSEL TO DETERMINE THE EXTENT, IF ANY, OF PERMISSIBLE SOLICITATION ACTIVITIES.

8. Amendment/Assignment. Any amendment to this Agreement shall only be binding if in writing and signed by both parties. You may not assign this Agreement without infoUSA Inc.'s prior written consent.

9. Severability. Should any term of this Agreement be declared void or unenforceable by any court of competent jurisdiction, such declaration shall have no effect on the remaining terms of this Agreement.

10. No Waiver. The failure of either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach hereunder shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

11. Entire Agreement. This Agreement constitutes the entire agreement between you and infoUSA Inc. and supersedes any prior agreements, representations, proposals, or understandings, whether oral or written, with respect to the subject matter of this Agreement.

It is a violation of both federal and state law to transmit an unsolicited advertisement to a facsimile machine. Any person violating such laws may be subject to civil and criminal penalties which may exceed \$500 for each transmission of an unsolicited facsimile. infoUSA Inc. provides its business lists for lawful purposes only and expressly forbids the use of its business lists in any unlawful manner.

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